



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 35

Date of Decision: 2025-02-27

IN THE MATTER OF SECTION 45 PROCEEDINGS

Requesting Party: Gowling WLG (Canada) LLP

Registered Owner: Middleby Canada Company Inc.

Registrations: TMA619,963 for CROWN FOOD SERVICE EQUIPMENT,
TMA620,267 for CROWN FOOD SERVICE EQUIPMENT LTD.,
TMA655,434 for CROWN FOOD EQUIPMENT

INTRODUCTION

[1] This is a decision involving summary expungement proceedings under section 45 of the *Trademarks Act*, RSC 1985, c T 13 (the Act) with respect to registrations Nos. TMA619,963 for CROWN FOOD SERVICE EQUIPMENT, TMA620,267 for CROWN FOOD SERVICE EQUIPMENT LTD., TMA655,434 for CROWN FOOD EQUIPMENT (collectively, the Trademarks) currently owned by Middleby Canada Company Inc. (the Owner).

[2] The Trademark CROWN FOOD SERVICE EQUIPMENT is registered for use in association with the following goods and services (shown together with the associated Nice classes):

Goods

11(1) Commercial kitchen equipment, namely, skillets/braising pans (electric), steam jacketed kettles (electric), pressure cookers (electric), pressureless steamers (electric) and steam generators.

21(2) Commercial kitchen equipment, namely, skillets/braising pans (non-electric), steam jacketed kettles (non-electric), pressure cookers (non-electric), pressureless steamers (non-electric).

Services

35(1) Sales and distribution of commercial food equipment.

37(2) Repair of commercial food equipment.

39(3) Distribution of commercial food equipment.

[3] The Trademark CROWN FOOD SERVICE EQUIPMENT LTD. is registered for use in association with the following goods and services (shown together with the associated Nice classes):

Goods

11(1) Commercial kitchen equipment, namely, skillets/braising pans (electric) and steam jacketed kettles (electric).

11(2) Commercial kitchen equipment, namely, pressure cookers (electric) and pressureless steamers (electric).

11(3) Commercial kitchen equipment, namely, steam generators.

21(4) Commercial kitchen equipment, namely, skillets/braising pans (non-electric) and steam jacketed kettles (non-electric).

21(5) Commercial kitchen equipment, namely, pressure cookers (non-electric) and pressureless steamers (nonelectric).

Services

35(1) Sales and distribution of commercial food equipment.

37(2) Repair of commercial food equipment.

39(3) Distribution of commercial food equipment.

[4] The Trademark CROWN FOOD EQUIPMENT is registered for use in association with the following goods and services (shown together with the associated Nice classes):

Goods

11(1) Commercial kitchen equipment, namely, skillets/braising pans (electric), steam jacketed kettles (electric), pressure cookers (electric), pressureless steamers (electric) and steam generators.

21(2) Commercial kitchen equipment, namely, skillets/braising pans (non-electric) and steam jacketed kettles (non-electric), pressure cookers (non-electric) and pressureless steamers (non-electric).

Services

35(1) Sales and distribution of commercial food equipment.

37(2) Repair of commercial food equipment.

39(3) Distribution of commercial food equipment.

[5] For the reasons that follow, I conclude that the registrations ought to be expunged.

PROCEEDINGS

[6] On August 28, 2023, at the request of Gowling WLG (Canada) LLP (the Requesting Party), the Registrar of Trademarks issued a notice with respect to each of the registrations pursuant to section 45 of the Act to the Owner.

[7] The notices required the Owner to show whether the Trademarks were used in Canada in association with each of the goods and services specified in the registrations at any time within the three-year period immediately preceding the date of the notice and, if not, the date when that Trademark was last in use and the reason for the absence of such use since that date.

[8] For each of the Trademarks, the relevant period for showing use is between August 28 2020, and August 28, 2023.

[9] In each of the three proceedings, the Owner furnished the affidavit of its President and founder, Wayne Eadie, sworn on March 26, 2024, with Exhibits 1 to 8.

[10] Both parties filed representations and were represented at the hearing.

EVIDENCE

[11] Mr. Eadie is the Vice President and General Manager of the Owner [para 1]. He describes the Owner as a worldwide leader in commercial kitchens, offering advanced innovations for cooking and warming, refrigeration, and beverage solutions for restaurant and institutional customers [para 3].

[12] Mr. Eadie states that the Owner's products are sold and invoiced through Southbend, an affiliate of the Owner, and this entity handles the collection of payment from end Canadian customers, then the Owner directly ships the products to the customer in Canada [para 13].

[13] Mr. Eadie states that an installation and operation manual is inserted in the box within which the Owner's products are shipped to Canadian customers. He adds that the Trademarks are prominently displayed on the first page of each of the manuals [paras 8-9].

[14] Attached to the Eadie affidavit are representative samples of installation and operation manuals that accompanied the Owner's products sold during the relevant period in Canada for the following goods [para 8]:

- Electric floor tilt skillet/braising pan [Exhibit 3a]
- Electric steam kettle [Exhibit 3b]

- Electric pressure compartment cookers [Exhibit 3c]
- Electric pressureless steamers [Exhibit 3d]
- Electric steam generator [Exhibit 3e]
- Non-electric skillet/braising pan [Exhibit 3f]
- Non-electric steam jacketed kettle [Exhibit 3g]
- Non-electric pressure cooker [Exhibit 3h]
- Non-electric pressureless steamers [Exhibit 3i]

[15] I note that CROWN FOOD SERVICE EQUIPMENT appears at the bottom of the first and last pages of the manuals, alongside A Middleby Company underneath with an address, phone number and a website address.

[16] Mr. Eadie states that the Trademarks also appear on a warranty and manufacturing label that is affixed on the non-electric products when they are sold to Canadian customers. Attached as Exhibit 5 is a warranty and manufacturing label, that Mr. Eadie confirms as being representative of the labels affixed to the Owner's non-electric products sold in Canada during the relevant period [para 11]. I note that MANUFACTURED BY - CROWN® FOOD SERVICE EQUIPMENT appears at the bottom of the label.

[17] Mr. Eadie explains that the goods and services were advertised on the Owner's website during the relevant period and customers in Canada could access and did access during that period. Attached as Exhibit 4 are printouts of the website that Mr. Eadie confirms being representative of the website during the relevant period. On these printouts, different products are shown, and there is also a form to "REQUEST A QUOTE". A stylised "CROWN" appears throughout this exhibit. I also note that most of these printouts are illegible.

[18] Also attached to the Eadie affidavit are the following relevant Exhibits:

- Exhibit 7 consists of a sampling of invoices. These invoices are issued by CROWN FOOD SERVICES EQUIPMENT, Div. of Middleby Canada Company Inc. to SOUTHBLEND/CROWN STEAM and then shipped to a Canadian address, within the relevant period. Mr. Eadie confirms that these invoices represent sales of goods bearing the Trademarks.
- Exhibit 8 consists of a table providing a breakdown of various models of each of the goods sold and shipped in Canada during the relevant period.

REASONS FOR DECISION

Issues Raised by the Requesting Party

[19] The Requesting Party raises the following issues:

- The Trademarks are merely used as corporate identifier, not trademarks, and, therefore, there is no use in accordance with section 4 of the Act.
- The Owner did not demonstrated use of the Trademarks in the “normal course of trade”.
- There is only a bare assertion that the Trademarks appear on the goods without evidence to confirm.

Preliminary Matter

[20] As a preliminary matter, I agree with the Owner that the Requesting Party introduced evidence in its written submissions. In a section 45 proceeding, the Registrar may only receive evidence tendered by or on behalf of the registered owner [see *Meredith & Finlayson v Canada (Registrar of Trade Marks)* (1991), 40 CPR (3d) 409 (FCA)]. Therefore, the evidence put forward by the Requesting Party will not be considered.

Trademarks or Trade Names

[21] With respect to the use of the Trademarks as trade names, the Requesting Party submits that the evidence demonstrates CROWN FOOD SERVICE EQUIPMENT used merely as a trade name rather than a trademark in all the exhibits where it appears. First, in the manuals, it submits that a corporate address and telephone number appear right below the phrase CROWN FOOD SERVICE EQUIPMENT. Second, the exhibited invoices refers to CROWN FOOD SERVICE EQUIPMENT as a as a corporate division of Middleby Canada Company Inc. Third, in the exhibited label, CROWN FOOD SERVICE EQUIPMENT is identified as a manufacturer.

[22] The Owner submits that use of a trade name does not exclude use of that trade name as a trademark within the meaning of section 4 of the Act. It adds that in the evidence, the Trademarks appear more prominently, thus creating a distinctive element. First, on the manual, the Trademarks appear in capital letters. Second, on the invoices, the Trademarks appear in a red font, while the Owner's name and address are in a black font. Third, on the label, there is a hyphen between MANUFACTURED BY and CROWN FOOD SERVICE EQUIPMENT, creating a distance. It adds that a consumer would perceive the Trademarks used as trademarks and not as trade names.

[23] Whether a word is used as a trademark or as a trade name is a question of fact. The question is whether the owner has shown use of its trademark in such a way that it is identifiable as a trademark and not merely as a corporate name or corporate identifier. One of the relevant factors to consider is whether the trademark stands apart from the corporate address and other corporate identifier information to the extent that the public would perceive such use as a trademark and not merely as identification of a legal entity [see *Road Runner Trailer Manufacturing Ltd v Road Runner Trailer Co*

(1984), 1 CPR (3d) 443 (FCTD) at para 16; *Nightingale Interloc Ltd v Prodesign Ltd* (1984), 2 CPR (3d) 535 (TMOB) at para 7].

[24] In the present case, CROWN FOOD SERVICE EQUIPMENT always appears either in association with an address and corporate contact information or as an identifier of the manufacturer of products.

[25] In the manuals, CROWN FOOD SERVICE EQUIPMENT is described as the Owner's company directly followed by the corporate contact information.

[26] On the label, CROWN FOOD SERVICE EQUIPMENT directly follows MANUFACTURED BY. I consider that this mention only refers to the manufacturer of the product, rather than a trademark associated with such product. Moreover, the trademark symbol or ® symbol appears directly after CROWN, making it stands out from FOOD SERVICE EQUIPMENT.

[27] I consider that, in the manual and on the label, CROWN FOOD SERVICE EQUIPMENT is not presented in a manner such that it would be perceived by a consumer as a trademark [for similar conclusions, see *Norton Rose OR SENCRL, srl v Illico Communication Inc*, 2013 TMOB 30, *aff'd* 2015 FC 165; *Borden Ladner Gervais LLP v GDC Communities*, 2015 TMOB 50; *Anita Mar dba Trademark Angel and Forever Natural Inc*, 2022 TMOB 208].

[28] As for the invoices, I agree with the Owner that CROWN FOOD SERVICE EQUIPMENT stands out from the Owner's name and corporate contact information due to the larger red font. However, there is no evidence that these invoices accompanied the goods sold by the Owner. In this respect, I note that the goods are sold and shipped to two different entities.

[29] Even if the evidence demonstrated that the invoices accompanied the shipment of goods to the end-consumers in Canada, I would not consider it evidence of use of the Trademarks in association with the registered goods.

Indeed, display of a trademark at the top of an invoice, rather than in the body of the invoice, will not generally constitute use of that trademark in association with the invoiced goods [see *Tint King of California Inc v Canada (Registrar of Trade Marks)*, 2006 FC 1440 at para 32]. However, I would find that sufficient to establish use in association with at least “Sales and distribution of commercial food equipment” and “Distribution of commercial food equipment” given that in the context of services, a trademark appearing at the top of an invoice is sufficient to show use [*ibid*, at paragraph 35]. Again, however, there is no evidence that customers would have encountered the Trademarks on the invoices or otherwise in the course of the performance or advertising of those services.

[30] Accordingly, I conclude that the Owner failed to demonstrate use of its Trademarks in Canada during the relevant period. Furthermore, the Eadie affidavit does not put forward special circumstances to justify the absence of use of the Trademarks in association with the registered goods and services.

DISPOSITION

[31] Pursuant to the authority delegated to me under section 63(3) of the Act, and in compliance with the provisions of section 45 of the Act, the registrations will be expunged.

Ann-Laure Brouillette
Member
Trademarks Opposition Board

Appearances and Agents of Record

HEARING DATE: 2024-11-04

APPEARANCES

For the Requesting Party: Mike Myschyshyn

For the Registered Owner: Gabriel St-Laurent

AGENTS OF RECORD

For the Requesting Party: GOWLING WLG (Canada) LLP

For the Registered Owner: BORDEN LADNER GERVAIS